

Agenda

Item #5



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

Cc: Robert Zabierek

From: Jonathan Wayne, Executive Director

Date: September 22, 2008

Re: Permissibility of Payment to Family Member

Robert "Bo" Zabierek is a Maine Clean Election Act candidate for the House of Representatives, District 9. He resides in Sherman, Maine. Last week, he telephoned the Commission office to ask whether he could use Maine Clean Election Act (MCEA) funds to pay two bands to perform at a campaign event. The candidate states that the event "is intended to draw out new voters, register them, and ask them for their vote."

One of the bands Mr. Zabierek would like to hire, Kirbside Prophet, includes his son, James, who is a music student at the University of Maine in Orono. The candidate proposes to pay the band \$500 for the performance, and his son would receive \$100 in compensation. Candidate Registrar Gavin O'Brien suggested to Mr. Zabierek that he should provide evidence that the proposed expenditure is permissible under the restrictions imposed by the Legislature earlier this year on MCEA payments to family members.

The candidate submitted an e-mail to Gavin O'Brien on Wednesday, September 17 providing information about the proposed expenditure to Kirbside Prophet. On the following day, I e-mailed five questions to the candidate regarding the band's usual compensation and whether James Zabierek is a member of the candidate's household. The Zabiereks sent two responses, but did not address the issue of the son's residence.

Applicable Statute and Commission Policy

Candidates must spend MCEA funds "for campaign-related purposes." (21-A M.R.S.A. § 1125(6)) The statute does not define campaign-related purposes, but rather requires the Commission to "publish guidelines outlining permissible campaign expenditures." These general guidelines – which apply to all MCEA expenditures – are attached for your background information.

Earlier this year, the Legislature enacted a more specific policy in 21-A M.R.S.A. §1125(6-B) regarding whether candidates could pay MCEA funds to family members:

6-B. Expenditures as payment to household members. A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

A. For a legitimate campaign-related purpose;

B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and

C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

To implement this provision, the Commission adopted the attached policy at its July 28, 2008 meeting.

Permissibility of Proposed Payment by Mr. Zabierek

Threshold question

There is some question whether the prohibition in 21-A M.R.S.A. § 1125(6-B) even applies to Robert Zabierek's proposed payment to Kirbside Prophet, because the candidate and his son, James, may not be members of the same household. The candidate resides in Sherman, Maine and the son is a student at the University of Maine at Orono. If James Zabierek is not a member of the candidate's household, the prohibition does not apply, and the expenditure is permissible if made for "campaign-related purposes."

Application of 21-A M.R.S.A. § 1125(6-B)

If James Zabierek is a member of the candidate's household, the Commission staff tentatively concludes that the payment is permissible under the three criteria set forth in the statute:

- *Legitimate Campaign-Related Purpose.* The proposed event does appear related to Robert Zabierek's campaign. In the staff's internal discussions, some employees raised the issue of whether the primary purpose of the event is to

register young voters generally or to promote Robert Zabierek's campaign in particular. On the whole, the staff is comfortable that the proposed event has a sufficient relationship to Mr. Zabierek's campaign.

- *Normal Course of Business.* It appears that performing concerts for compensation is a regular activity of the Kirbside Prophet band. Robert Zabierek advises that the band plays about every two weeks. The band's website on My Space indicates 10 engagements are scheduled through January 10, 2009.

You may wish to consider, however, the factor that performing paid concerts is not James Zabierek's full-time occupation or business. He is a student of classical guitar and music education at the University of Maine at Orono, and works at Microdyne Outsourcing in Old Town. Nevertheless, the statute does not require that the campaign service provided by the candidate's family member be their full-time occupation. Given the ambiguity in the statute and the relatively small amount of the proposed payment, the Commission staff is comfortable that this criterion is met.

- *Reasonable Payment.* In the opinion of the Commission staff, the \$100 payment to James Zabierek appears to be reasonable, based on the information provided by Robert Zabierek about the band's normal charges. It would have been preferable if the information about those charges had come from the candidate's son (as the proposed payee), but it seems credible on its face.

Views of Commission Staff

Robert Zabierek has not clarified whether his son is a member of his household. If he is not a member of the household, the prohibition in 21-A M.R.S.A. § 1125(6-B) does not apply and the payment is allowable if it is for a "campaign-related purpose."

If James Zabierek is a member of the candidate's household, the Commission staff believes the proposed payment likely meets the criteria for the exception in 21-A M.R.S.A. § 1125(6-B). The proposed concert appears to be campaign-related and within the normal scope of the band's activities, and the payment to James Zabierek appears reasonable in amount.

O'Brien, Gavin

From: zabierek@fairpoint.net
Sent: Wednesday, September 17, 2008 7:32 PM
To: O'Brien, Gavin
Subject: HD9 Democrat's Rock & Register Event

Gavin et al,

Thanks for the opportunity to clarify what I have planned and for which I have requested your assistance.

The one big event I have planned is intended to draw out new voters, register them, and ask them for their vote.

"Rock & Register with House District 9 candidate Robert "Bo" Zabierek" is a free concert planned for Saturday October 11th during Columbus Day weekend from 6-10pm featuring District 9's hottest Rock band, "Kirbside Phophet". They have a following made up of our target voters; young people 17-24. We will also educate our newly registered voters about early voting as many will be away at college on Nov. 4th.

My son James plays bass guitar for the band and shares equally in the charge of \$500.00 for the band per night split between four band members and the sound/lighting man for a total of \$100.00 per man.

The hall rental is \$150.00 with an additional \$100.00 security deposit fee. I intend to use Maine Clean Elections Funds to pay these charges.

Respectfully Yours,
Robert "Bo" ZAbierek
House District 9 Democratic Candidate
207-365-4329

mail2web - Check your email from the web at
<http://link.mail2web.com/mail2web>

Wayne, Jonathan

From: Wayne, Jonathan
Sent: Thursday, September 18, 2008 11:43 AM
To: 'zabierek@fairpoint.net'
Cc: O'Brien, Gavin; Lavin, Paul
Subject: Paying Maine Clean Election Act Funds to Son's Band

Mr. Zabierek:

The Maine Clean Election Act (MCEA) prohibits a candidate from paying MCEA funds to "a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest" unless the candidate submits evidence that the payment complies with certain conditions in the law. So, I suggest not entering into a binding obligation to pay him any MCEA funds until the Commission considers this matter at its meeting on September 29. I understand from Gavin that you will be available by telephone that morning. The Commission members may very well have some questions for you.

I have some questions that will assist the Commission in making a determination. Please respond no later than Sunday, September 21:

- 1) Gavin told me that your son is a college student. Where does he reside?
- 2) Is he a member of your household?
- 3) Does your son usually receive income of \$100 for performing a concert?
- 4) In the past 12 months, for how many concerts has your son received payment of \$100 (if the exact number is not known, an estimate is sufficient)?
- 5) How long has the band been in existence?

Also, you told Gavin that your son normally receives a payment when the band performs. If that payment is regularly \$100, it would be helpful if your son can provide some written confirmation of this no later than Sunday, September 21. If he prefers fax, our number is 287-6775.

Thank you.

Jonathan Wayne
Executive Director
Maine Ethics Commission
135 SHS
Augusta, ME 04333
287-4179

From: James Zabierek [mailto:z_jimbo@hotmail.com]
Sent: Saturday, September 20, 2008 10:43 AM
To: Wayne, Jonathan
Cc: zabierek@fairpoint.net
Subject: RE: Paying Maine Clean Election Act Funds to Son's Band

hey, this is Robert Zabiereks son Jim. i am in fact his son. im a student at UMO in the classical guitar/music education program. i work at microdyne outsourcing in Old Town. i have been in the band Kirbside Prophet for over a year. we have played out regularly over the past year, and we are playing at my fathers "rock the vote" event. here is my personal myspace page, and my bands myspace page for references. for any further information that may be required you can feel free to email me back at this address. thank you.

www.myspace.com/kirbsideprophet

www.myspace.com/jazplaysguitar

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Kirbside Prophet

Metal / Rock / Southern Rock




"KirbSide"

Oakfield, Maine
United States

Profile Views:
17425


Last Login:
9/22/2008

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Contacting Kirbside Prophet

MySpace URL:
<http://www.myspace.com/kirbsideprophet>

Kirbside Prophet: General Info

Upcoming Shows

Sep 20 2008	9:15P	The Lounge Downunder	Houlton, Maine
Oct 10 2008	9:15P	The Wrong Turn Pub	Kenduskeag, Maine
Oct 11 2008	6:00P	Island Falls Municipal Building	Island Falls, Maine
Oct 18 2008	9:15P	The Lounge Downunder	Houlton, Maine
Nov 1 2008	9:30P	The Lounge Downunder	Houlton, Maine
Nov 15 2008	9:15P	The Wrong Turn Pub	Kenduskeag, Maine
Nov 22 2008	9:00P	The Shak-Rumford	Rumford, Maine
Nov 29 2008	9:30P	The Lounge Downunder	Houlton, Maine
Dec 12 2008	9:00P	The Wrong Turn Pub	Kenduskeag, Maine
Dec 31 2008	9:30P	The Lounge Downunder	Houlton, Maine
Jan 10 2009	9:00P	Private Party	Bangor, Maine

Kirbside Prophet's Latest Blog Entry

Wayne, Jonathan

From: zabierek@fairpoint.net
Sent: Sunday, September 21, 2008 9:48 AM
To: Wayne, Jonathan

Jonathan,

The band has been together for about a year and plays about once every two weeks - so they have had about 25 paying gigs. They play for a discount rate(half)the first time they play at a new club, sort of like a paid audition. They get full rate from then on, always \$500.00 per concert(\$100.00 per man).

Sincerely,
Robert A. "Bo"Zabierek
HD 9 Candidate

mail2web - Check your email from the web at <http://link.mail2web.com/mail2web>



2008 EXPENDITURE GUIDELINES

For Maine Clean Election Act Candidates

Candidates must spend Maine Clean Election Act (MCEA) funds for campaign-related purposes and not for other purposes such as the candidate's personal benefit, party-building, or to promote another candidate's campaign.

- Expenditures for "campaign-related purposes" are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using MCEA funds must also take into account the public nature of the funds, the underlying objectives of the MCEA, and the reasonableness of the expenditures under the circumstances. In Maine, traditional campaign expenses have included:
 - Printing and mailing costs;
 - Political advertising expenses;
 - Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
 - Office supplies;
 - Campaign events (e.g., food, rent of tent or hall, etc.);
 - Campaign staff expenses;
 - Campaign travel expenses, such as fuel and tolls; and
 - An entry fee for an event organized by a party committee, charity, or community organization or an ad in an event publication, as long as the expenditure benefits the candidate's campaign;
- Candidates may not use MCEA funds for personal expenses. This means candidates may not borrow from or use MCEA funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, such as:
 - Day-to-day household food items and supplies;
 - Vehicle and transportation expenses unrelated to the campaign;
 - Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign; and
 - Clothing, including attire for political functions such as business suits or shoes.
- Maine Clean Election Act funds may not be spent to:
 - make independent expenditures supporting or opposing any candidate, ballot measure, or political committee;
 - assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
 - contribute to another candidate, a political committee, or a party committee, other than in exchange for goods and services;
 - pay a consultant, vendor, or campaign staff, other than in exchange for campaign goods or services;
 - make a thank-you gift (including a gift card) to a volunteer or supporter;
 - compensate the candidate for services provided by the candidate;
 - make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
 - promote political or social positions or causes other than the candidate's campaign;
 - pay civil penalties, fines, or forfeitures to the Commission, or defend the candidate in enforcement proceedings brought by the Commission; or
 - assist the candidate in a recount of an election.

■ Guidelines on Selected Issues

- *Electronics and Other Personal Property.* Goods purchased with MCEA funds that could be converted to personal use after the campaign (e.g., computers, fax machines, and cellular telephones) must be reported on Schedules B and E of the candidate reporting form. No later than 42 days after the general election, the goods must be sold at fair market value and the proceeds returned to the Maine Clean Election Fund. Candidates are welcome to lease electronic and other equipment.
- *Food.* Candidates may spend a reasonable amount of MCEA funds on food for campaign events or to feed volunteers while they are working. Legislative candidates may not use MCEA funds to purchase food that is consumed only by the candidate and/or the candidate's spouse.
- *Car Travel.* MCEA campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a travel log. For 2008, the campaign may make a travel reimbursement up to the number of miles traveled (as reported in the log) multiplied by \$0.42. Campaigns must keep the travel logs for two years, and provide them to the Commission if requested. Candidates and their spouses or domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$100 of their personal funds to pay for travel without making a contribution to the campaign.
- *Lodging.* Candidates may use MCEA funds to pay for lodging if necessary for campaign purposes, but must keep lodging expenses reasonable.
- *Post-Election Notes and Parties.* Candidates may spend up to the following maximum amounts of MCEA funds on post-election parties, thank you notes, or advertising to thank supporters or voters: \$250 for State Representative candidates and \$500 for State Senate candidates. Candidates may also use personal funds for these purposes.
- *Campaign Training.* Candidates may use MCEA funds for tuition or registration costs to receive training on campaigning or policy issues.
- *Salary and Compensation.* Candidates may use MCEA funds to pay for campaign-related services by staff or consultants, provided that compensation is made at or below fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount.

■ Required Record-Keeping

The MCEA requires participating campaigns to keep two documents for every expenditure over \$50: (1) an invoice from the vendor listing the goods or services purchased, and (2) a canceled check or other acceptable proof of payment to the vendor. Please select a treasurer who will be responsible about keeping these records.

■ Auditing and Compliance

In 2008, the Commission staff will audit at least 20% of MCEA candidates and will review all receipts and expenditures disclosed by MCEA candidates in campaign finance reports. The Commission frequently requests additional information from candidates to verify that public funds were spent for campaign-related purposes. Candidates who misuse public funds may be required to repay some or all public funds received, may be liable for civil penalties, and may be referred to the State Attorney General for possible criminal prosecution.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 242 State Street, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

POLICY ON PAYING CAMPAIGN FUNDS TO FAMILY MEMBERS

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's family or household, which were established by the Maine Ethics Commission pursuant to statutory changes enacted during the First Special Session of the 123rd Legislature (P.L. 2007, c. 567 (eff. July 18, 2008) and c. 571 (eff. April 7, 2008)).

DISCLOSING A PAYMENT TO A MEMBER OF THE CANDIDATE'S FAMILY OR HOUSEHOLD (applies to gubernatorial, legislative, and county candidates)

- *Traditionally financed candidates.* If a candidate uses campaign funds to pay or reimburse a member of the candidate's household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report. (P.L. 2007, c. 567 (eff. July 18, 2008))
- *Maine Clean Election Act candidates.* If a candidate uses Maine Clean Election Act funds to pay or reimburse a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report. (P.L. 2007, c. 571 (eff. April 7, 2008))

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, or domestic partner. 21-A M.R.S.A. §§ 1(20) & 1122(4-A))

NEW RESTRICTIONS FOR MAINE CLEAN ELECTION ACT CANDIDATES (21-A M.R.S.A. § 1125(6-B), enacted by P.L. 2007, c. 567 (eff. July 18, 2008))

In 2008, the Legislature enacted a broad prohibition against the use of Maine Clean Election Act (MCEA) funds to pay:

- the candidate,
- a member of the candidate's household, or
- a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest.

(over)

The Legislature also provided two narrow exceptions to this prohibition:

I. Permitted Payments to the Candidate and Household Members

A candidate may only use MCEA funds to pay the candidate, a member of the candidate's household, or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest if the candidate submits evidence to the Commission that the expenditure will be made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

Timing of Submitting Evidence; Procedure for Commission Action

If a candidate intends to pay MCEA funds to an individual or entity covered by 21-A M.R.S.A. § 1125(6-B), the candidate must submit the evidence required by the statute to the Commission for its approval before entering into an obligation to the payee. The Commission staff shall consider this evidence to determine whether the expenditure, in its view, meets the requirements of 21-A M.R.S.A. § 1125(6-B) and submit its views to the candidate and the Commission. The staff may request additional relevant evidence and, after considering it, the staff shall notify the candidate and the Commission of any proposed expenditure which, in its view, does or does not meet the requirements of 21-A M.R.S.A. § 1125(6-B).

The Commission must hold a hearing on the matter at the next regularly scheduled meeting of the Commission to determine if the proposed expenditure meets the requirements of the statute.

Evidence Submitted

The candidate should provide information that establishes that the proposed payee currently is employed by or is engaged in a business that provides the goods or services. The candidate should state the proposed price for the goods and services, and include a justification for that amount. In most cases, the justification will include information from the proposed payee regarding the usual price for providing such goods and services to other clients. The candidate should also explain how the goods or services are campaign-related.

II. Reimbursements

Reimbursements, including travel reimbursements, that are made in accordance with the Commission's rules and guidelines are exempt from this restriction and from the pre-approval process. However, the candidate must disclose the family or household relationship when reporting the reimbursement as described above.

If a MCEA candidate or a family or household member uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate must reimburse the individual with MCEA funds. (There are limited circumstances when reimbursement is not required. Please refer to the *2008 Candidate Guide* for more information.)